

REASONS

Humbly Offered

TO HIS MAJESTY

For His Dispensing with the

OATH of ALLEGIANCE

As to his Highness

The Duke of York:

And for his Sitting in the

Council of Scotland

Without taking the said

O A T H.

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TO HIS MAJESTY

OATH OF ALLEGIANCE

The Duke of York:

Council of Scotland

O. T. E.

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REASONS Offered to His Majesty for Dispensing with the Oath of Allegiance as to his Highness the Duke of York, and for his Sitting in the Council of Scotland without taking the said Oath.



Because First, It is certain that many positive Laws are dispensable, not only in Cases not intended by the *Legislators*, which is the ordinary Interpretation of Equity, but also where the Law is most expresse: this being that Relaxation of Law which many supervenient considerations may plead for, and doth in effect as properly, and necessarily belong to His Majesties Prerogative, and the due Administration of the Government, as the power of Execution, which sometimes is thereby more advantageously superseeded.

Secondly, It is from this unquestionable Prerogative of Dispensing, that all Respites, Remissions, special Priviledges, Immunities, Indulgences, *Non obstantes*, and the like, do clearly flow: These being as obviously given without, nay, contrary to the precept of Law, as they are known every where to be the most peculiar and reserved Marks of Sovereignty.

Thirdly, Of these many Laws none known to be more dispensable than such as do only enjoyn an Oath, or Subscription for the greater publick security, in as much as His Majesty, *Tanquam hic solus sustinens Personam et Auctoritatem Civitatis*, is the only party, and consequently according to the undoubted priviledg of every party in whose favour any Law is conceived and made, hath as absolutely the right of Dispensing, as that of Exacting.

Fourthly, The Laws commonly judged Indispensable are such as either are simply Declarative, requiring no subsequent Execution, or concern the interest of particular parties; so as their Contravention may prove a Grievance or Nuisance, as *English Lawyers* term it. In which case no Dispensation can be validly granted without the said parties consent; but so it is, that the Act enjoining the Oath of Allegiance is no such Law, as is clear from its Tenor, and therefore not Indispensable.

Fifthly, By the Fourth, and Seaventh Acts of the *Parliament 1661*; It is expressly Statuted and Declared, and that upon the ground of His Majesties undoubted Prerogative, and our ancient Laws establishing the same; That all publick Oaths concerning the Government of the Church or Kingdom, do depend upon his Majesties special Warrant and approbation: Now by all Law and reason in the World, the power of approving, disproving, or dispensing are inseparably connected.

Sixthly, The very Tenor of the Act for taking the Oath of Allegiance Act XI. *Parliament 1661*. obtruded in this case to his Highness, offereth a plain solution of the Question, in as much as it is His Majesty alone, without Concurrence of the States, conformable to His Royal Prerogative, who therein declares that he will be carefull that such as he shall think fit to call to His Council shall be duly qualified, and that they shall give full assurance thereof by their publick Testimony: and all the part of the Estates in
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that Act, is meerly to consent for the Peoples Interest, whose liberty His Majesty would not impose upon without such a consent, that the Oath of Allegiance shall be that publick Testimony : So that it is manifest, that by that Act His Majesties sole Prerogative of either approving or dispensing with this Oath of Allegiance, or any other of that nature, is rather established than in the least impeached.

Seventhly, His Highness is not so much as Comprehended or concerned in the very terms of the Act ; forasmuch as the Act is only made for such as His Majesty shall nominate to be of His Privy Council : which clearly imports that the Act was only intended for such as having no other right than his Majesties Call and Nomination to enter in Council, might very justly be required to give the foresaid evidence of their Loyalty : But as to his Highness, whose Royal Blood, Birth and Breath, do also Nearly, and mightily Oblidge Him, and assure His perpetual Loyalty ; It is very evident that to demand of him this Test, would nor be more derogatory to His Royal dignity than contrary to the very intention of the Act. And thusevery where it is observed, That Princes of the Blood are exempted from all such Oaths.

Eighthly, This same Act impowers His Majesties Council to require or forbear all other Persons, as to the taking of this Oath, as they should think fit : And shall so much be put in the Councils power, and yet His Majesties power to forbear His only Brother, Controverted ?

Ninthly, All Histories almost tell us that the dispensing with Oaths of this nature hath ever been judged the Prerogative of Princes ; wherein they have some times gone so far, as for the more signal acknowledgment of some particular Persons fidelity, to grant them the priviledge of being admitted both Witnesses and Jurours, *etiam Injurati* : how much more then ought His Majesties pleasure in the case in hand be received as an absolute determination.

Tenthly, His Majesty by vertue of His Royal Prerogative hath in favour of *Nonconformists* dispensed with a great many and most positive Acts of *Parliament* made for *Conformity* and against *Nonconformists* : With what colour then can His Majesties Prerogative in this case of his Royal Highness, every way infinitely more favourable, in the least be called in question ? Neither can it be said, that by the same Acts power is given to His Majesty to suspend their Execution, in respect that it is evident that His power of suspending is only expressed in two particular Acts, and as to the special Pains therein contained ; but hath no reference to any other Acts and things with which his Majesty hath been pleased to dispense, as said is, in behalf of that People. 2dly. It is yet more apparent, that the reference made in the said Acts to His Majesty for continuing or discontinuing the same, is not done by way of any addition to His Majesties power and Prerogative Royal : But clearly on the supposition, that as the Execution so the Suspension or Dispensation with all such Acts appertains to His Majesty, as an inherent and unquestionable Prerogative of the Crown ; so that this reference here expressed doth rather import the same to be in every such Act naturally implied.

Eleventhly, It is notoriously known, that even Magistrates of *Edinburgh* have been Connived at by the Council as to these Oaths, albeit they be clearly included in the Statute : How much less then can His Majesties Prerogative of dispensing therewith be called in question ?

F I N I S.